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SA

**WILLOUGHBY & HOEFER, P.A.**

ATTORNEYS & COUNSELORS AT LAW

930 RICHLAND STREET

P.O. BOX 8416

COLUMBIA, SOUTH CAROLINA 29202-8416

**RECEIVED**

AUG 14 2006

MITCHELL M. WILLOUGHBY  
JOHN M.S. HOEFER  
ELIZABETH ZECK\*  
RANDOLPH R. LOWELL  
K. CHAD BURGESS  
NOAH M. HICKS II\*\*  
M. McMULLEN TAYLOR  
BENJAMIN P. MUSTIAN

\*ALSO ADMITTED IN TX

\*\*ALSO ADMITTED IN VA

PSC 903  
DOCKETING DEPT  
FEDERAL CODE 803  
TELEPHONE 252-3300  
FAX 256-8062

9/18/06  
too

August 11, 2006

2006-252-A

**VIA HAND DELIVERY**

The Honorable Charles Terreni  
Chief Clerk/Administrator  
**South Carolina Public Service Commission**  
101 Executive Center Drive  
Columbia, South Carolina 29210

RECEIVED  
2006 AUG 11 PM 4:44  
SC PUBLIC SERVICE  
COMMISSION

RE: Transition Site Services Agreements – Carolina PB and Bennettsville MDF  
Informational filing pursuant to S.C. Code Ann. § 58-3-240 (Supp. 2005)

Dear Mr. Terreni:

Over the years Weyerhaeuser Company (“Weyerhaeuser”) has been operating certain industrial facilities located in a county industrial park in Marlboro County, South Carolina, consisting of a paper mill (“PM”), a mid-density fiber (“MDF”) manufacturing facility, and a particle board (“PB”) manufacturing facility. Each of these three facilities is provided sewerage and heat (steam) services by a wastewater treatment facility and steam generating facility, respectively, that are owned and operated by Weyerhaeuser and co-located with the PM, PB and MDF facilities. During this time, Weyerhaeuser was supplying sewerage and heat services only to itself and thus, was not a public utility subject to the jurisdiction of the South Carolina Public Service Commission (“Commission”).

Recently, Weyerhaeuser negotiated a contract for the sale of its PB and MDF manufacturing facilities to Flakeboard America Limited (“Flakeboard”).<sup>1</sup> However, in order for the PB and MDF manufacturing facilities to operate and function as designed, they will continue to require the sewerage and steam services that Weyerhaeuser currently provides to all three manufacturing facilities. Therefore, Weyerhaeuser has agreed to continue providing sewerage services to the PB facility and sewerage and steam services to the MDF facility, for compensation, pursuant to two (2) Transition Site Services Agreements (“TSSA”) which were

<sup>1</sup> Weyerhaeuser will retain the PM manufacturing facility.

(Continued ...)

entered into on July 28, 2006. These services, however, qualify for exemption from public utility regulation in accordance with the provisions of S.C. Code Ann. §58-3-240 (Supp. 2005).

Section 58-3-240(B) states,

The provisions of Chapters 5 and 7 of [Title 58], excluding gas, are not applicable to the provision of utility services to industrial users of these services where the industrial users are located in a privately-owned industrial park where the provider of utility services and the industrial user have agreed in writing to the terms and conditions for the provision of utility services and where all jurisdictional utilities which would have the right to provide any or all the utility services have agreed in writing to waive their right to further notice and opportunity for hearing with respect to the written agreement and the provision of services under the terms of the agreement.

Under § 58-3-240(B), Flakeboard qualifies as an “industrial user”, Weyerhaeuser qualifies as a “provider of utility services”, and the PB and MDF manufacturing facilities are located within a “privately-owned industrial park.”<sup>2</sup> Additionally, under each TSSA, Flakeboard and Weyerhaeuser “have agreed in writing to the terms and conditions for the provision of utility services.” Therefore, all the requirements for exemption under § 58-3-240 have been met.

In order to give effect to this exemption, however, the contract between the provider of utility services and the industrial user and the written waiver from any jurisdictional utility are required to be filed with the Commission and the South Carolina Office of Regulatory Staff (“ORS”) “for information only.” *See* § 58-3-240(C); *see also* 2006 S.C. Act No. 318. Accordingly, enclosed for filing is a copy of the TSSA for Carolina PB (Wastewater) and a copy of the TSSA for Bennettsville MDF (Steam/Wastewater), both of which have been duly executed by representatives from Weyerhaeuser and Flakeboard. With regard to the written waiver requirement, it is our understanding that there are no jurisdictional utilities authorized to provide sewerage and heat (steam) services in this portion of Marlboro County and in the absence of such, no written waiver is required.

We would greatly appreciate it if you would acknowledge your receipt of each TSSA by file-stamping the extra copies and returning them to us via our courier.

By copy of this letter, we are providing the Executive Director of ORS a copy of each TSSA and attach a certificate of service to that effect.

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<sup>2</sup> Please note that pursuant to 2006 S.C. Act No. 386, the South Carolina General Assembly amended S.C. Code Ann. § 4-12-30 and § 4-29-67 to provide that county owned property within an industrial park is considered privately owned for purposes of exemption under § 58-3-240.

The Honorable Charles Terreni

August 11, 2006

Page 3

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If there are any questions regarding this matter or if any additional information is needed, please do not hesitate to contact us.

Very truly yours,

**WILLOUGHBY & HOEFER, PA**



John M.S. Hoefer

JMSH/amw

Enclosures

cc: Joseph P. Jackowski, Esquire  
C. Dukes Scott, Executive Director

BEFORE

THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

RECEIVED  
2006 AUG 11 PM 4:49  
SC PUBLIC SERVICE  
COMMISSION

IN RE: )  
 )  
Transition Site Services )  
Agreements – Carolina PB and )  
Bennettsville MDF )  
Informational filing pursuant to )  
S.C. Code Ann. § 58-3-240 (Supp. 2005) )  
\_\_\_\_\_ )

CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day two (2) copies each of the  
**Transition Site Services Agreement for Carolina PB** and the **Transition Site Services  
Agreement for Bennettsville MDF** via hand-delivery to the below-named persons, addressed as  
follows:

Honorable C. Dukes Scott  
Executive Director  
Nanette S. Edwards, Esquire  
**Office of Regulatory Staff**  
Post Office Box 11263  
Columbia, South Carolina 29211

Andrea M. Wright  
Andrea M. Wright

Columbia, South Carolina  
This 11<sup>th</sup> day of August, 2006.

**TRANSITION SITE SERVICES AGREEMENT  
FOR  
CAROLINA PB  
(WASTEWATER)**

This Transition Site Services Agreement (this "**Agreement**") is made as of July 28, 2006 by and between Weyerhaeuser Company, a Washington corporation ("**Weyerhaeuser**"), and Flakeboard America Limited, a Delaware corporation ("**Buyer**").

**RECITALS**

- A. Flakeboard Company Limited ("**FB**") and Weyerhaeuser entered into an Asset Purchase and Sale Agreement dated as of May 31, 2006 (the "**Purchase Agreement**") pursuant to which FB agreed to acquire, among other things, the Assets located at the Site (as defined in Article 1 below). Capitalized terms used but not defined in this Agreement shall have the meanings given such terms in the Purchase Agreement.
- B. FB assigned the Purchase Agreement in whole to Buyer.
- C. As of the Closing Date under the Purchase Agreement, Buyer does not have in place the facilities and infrastructure to independently provide certain services at the Sites.
- D. Buyer desires to obtain from Weyerhaeuser and Weyerhaeuser desires to provide to Buyer certain site services at the Sites.

**AGREEMENT**

**NOW, THEREFORE**, the parties hereto agree as follows:

**ARTICLE 1. AGREEMENT TO PROVIDE SITE SERVICES.** Upon the terms and subject to the conditions set forth in this Agreement, Weyerhaeuser agrees to provide to Buyer through Weyerhaeuser's existing facilities the services set forth on Exhibit A hereto (the "**Site Services**"), and Buyer agrees to take from and to pay Weyerhaeuser for such Site Services. The Site Services shall be provided at the Carolina PB facility (the "**Site**"), as more fully described on Exhibit A hereto

**ARTICLE 2. TERM.**

(A) The term of this Agreement shall commence on the Closing Date under the Purchase Agreement and shall continue until the three-year anniversary of the Closing Date. Thereafter, this Agreement will automatically renew for additional three-year renewal periods, unless Weyerhaeuser notifies Buyer of its intent to terminate one or more of the Site Services and/or this Agreement as provided in paragraph (B) below.

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(B) At any time after the one-year anniversary of the Closing Date, Weyerhaeuser may provide notice of its intent to terminate any one or more of the Site Services and/or this Agreement, provided that Weyerhaeuser will be obligated to continue providing such Site Service(s) for a period of up to two years after the date of such notice to allow Buyer time to replace such Site Service(s).

**ARTICLE 3. PRICE.** Buyer shall pay Weyerhaeuser for the Site Services provided under this Agreement in the amounts set forth on Exhibit A hereto.

**ARTICLE 4. PAYMENT.** Unless the parties otherwise agree, Weyerhaeuser shall bill Buyer for the Site Services on a monthly basis and Buyer shall pay each bill within ten days.

**ARTICLE 5. TERMINATION.** This Agreement and the parties' obligations hereunder shall terminate as set forth in this Article 5:

(A) **TERMINATION BY COMPLETION OF TERM.** This Agreement shall terminate upon the expiration of the term set forth in Article 2 hereof. This Agreement shall terminate as to each Site Service upon the expiration of the commitment term for such Site Service set forth on Exhibit A hereto.

(B) **TERMINATION BY COMPLETION OF TRANSITION.** This Agreement shall terminate as to each Site Service on the date that Buyer has completed its transition and no longer reasonably needs such Site Service under this Agreement.

(C) **TERMINATION FOR BREACH, FINANCIAL CONDITION.** Without prejudice to its other lawful rights and remedies, either party shall have the right to terminate this Agreement at any time upon the occurrence of any of the following events:

- (1) The other party breaches or is in default of any material term, condition or obligation under this Agreement, which breach or default is (a) not waived in writing by the non-breaching party or (b) not cured to the non-breaching party's reasonable satisfaction within 15 days after the breaching party's receipt of written notice thereof (or, if not reasonably capable of being cured within such 15-day period, the breaching party fails to commence such cure within such 15-day period and thereafter diligently pursue such cure). Failure of Buyer to make payment for the Site Services when due shall be a material breach of this Agreement.
- (2) Any proceeding in bankruptcy, reorganization or for the appointment of a receiver or trustee, or any other proceeding under any law for the relief of debtors, shall be instituted by the other party, or brought involuntarily against the other party and not dismissed within a period of 60 days from the date filed, or if the other party shall make an assignment for the benefit of creditors.

(D) **TERMINATION DUE TO CHANGED CIRCUMSTANCES.** This Agreement may be terminated by Weyerhaeuser in accordance with Article 11(A)(3) hereof.

(E) **TERMINATION BY MUTUAL AGREEMENT.** This Agreement may be terminated in whole or in part at any time by the mutual written agreement of the parties hereto.

**ARTICLE 6 DIRECT ACQUISITION OF SERVICES BY BUYER.** Except for Site Services that the parties mutually agree in writing to continue, Buyer shall use commercially reasonable efforts to as promptly as practicable independently provide its own services, enter into long-term arrangements for the provision of such services or procure such services from a third party, at which time this Agreement shall terminate with respect to such Site Services in accordance with Article 5(B) hereof. Buyer shall be solely responsible for all costs and expenses associated with such direct acquisition of services.

**ARTICLE 7 COMPLIANCE WITH LAW AND POLICIES.**

(A) **COMPLIANCE WITH LAW.** Each party shall, in the performance of this Agreement, comply with each statute, law, ordinance, code, rule, regulation, order, license, permit, judgment, decree or directive of any federal, state, county, municipal or local government (including any subdivision or agency thereof) applicable to the carrying on of its business and the performance of its obligations hereunder, including applicable Environmental Laws.

(B) **COMPLIANCE WITH POLICIES; ACCESS TO PREMISES.** When a party's employees, contractors or representatives are on the premises of the other party, such party shall cause such persons to observe the working hours, working rules and safety and security policies and procedures established by the other party. Weyerhaeuser shall have such access to Buyer's premises as Weyerhaeuser determines is necessary to perform its obligations under this Agreement, including monitoring, maintenance and repair related to the Site Services.

**ARTICLE 8 WARRANTY; LIMITATION OF LIABILITY.**

(A) **WARRANTY.** Weyerhaeuser represents and warrants to Buyer that it shall use commercially reasonable efforts to provide the Site Services in accordance with the terms of this Agreement. WEYERHAEUSER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES, WHETHER OF MERCHANTABILITY, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE, FOR SAID SITE SERVICES.

(B) **LIMITATION OF LIABILITY.** Notwithstanding anything in this Agreement to the contrary, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY LOSS OF PROFITS, LOSS OF USE, DOWNTIME, OR LOSS OF SALES, FOR ANY BREACH OF OR FAILURE TO PERFORM THIS AGREEMENT, REGARDLESS OF WHETHER ANY SUCH DAMAGES WERE FORESEEABLE AND REGARDLESS OF WHETHER THE CLAIM SOUNDS IN CONTRACT, TORT OR ANY OTHER THEORY.

## ARTICLE 9 COVENANTS OF BUYER.

(A) Buyer shall maintain in good repair all property, fixtures, equipment, materials and systems located on Buyer's site used in connection with providing the Site Services, and shall promptly repair any damage or loss thereto. All maintenance, repairs and modifications thereto shall be performed in compliance with applicable laws, codes and standards using first quality materials fit for their intended purpose.

(B) Buyer shall promptly notify Weyerhaeuser if it becomes aware of any impairment to any property, fixture, equipment, material or system related to the Site Services, or if it becomes aware of any required maintenance or repair thereto, or if it makes any modifications thereto. Any work on Weyerhaeuser's property, fixtures, equipment, materials or systems shall require the prior approval of Weyerhaeuser.

(C) Buyer shall notify Weyerhaeuser, reasonably in advance of its transfer, of any change to the substance or quantity of materials or substances sent to Weyerhaeuser's facility or property for treatment or processing, including any unsanitary, hazardous or toxic materials or substances. Buyer agrees that Weyerhaeuser shall not be responsible for or have any liability for dangerous, unsanitary, hazardous or toxic materials or substances on or from Buyer's site.

(D) Buyer shall obtain and maintain the following insurance coverages:

- (1) Commercial General Liability insurance with a limit of not less than \$1,000,000 per occurrence and \$1,000,000 annual aggregates, providing coverage for bodily injury, personal injury and property damage; contractual liability; and product and completed operations liability (and "Weyerhaeuser Company" shall be named as an Additional Insured).
- (2) Comprehensive Automobile Liability insurance (including owned, non-owned, and hired vehicles) with a combined single limit of not less than \$1,000,000, providing coverage for bodily injury, personal injury and property damage.
- (3) Workers' Compensation or Industrial Accident insurance with not less than statutory limits.
- (4) Employer's or Stop-Gap Liability insurance with a limit of not less than \$1,000,000.
- (5) Umbrella Liability insurance with limits of not less than \$5,000,000 each occurrence and in the aggregate.
- (6) Business Interruption insurance.

Such insurance of Buyer shall (a) contain a severability of interest clause, (b) provide a Waiver of Subrogation and/or Waiver of Recovery on behalf of Weyerhaeuser (with the exception of Workers' Compensation insurance), and (c) be primary coverage such that Weyerhaeuser's insurance and/or self-insurance shall be excess over any and all other available coverage and/or self-insurance. Buyer shall furnish Weyerhaeuser with a Certificate of Insurance evidencing the above coverage and shall require its insurance carrier(s) to give at least 30 days written notice prior to cancellation of said coverage, either in whole or in part. The failure of Buyer's insurance



carrier to give said notice as required shall be considered a default on Buyer's part. Buyer's insurance carrier(s) shall have a Best's rating of no less than B+ VII. Buyer shall ensure that its contractors and subcontractors performing work at Buyer's Site and/or Weyerhaeuser's facility have insurance coverages and endorsements consistent with the above, with the exception of policy limits and Property and Boiler Machinery insurance.

(E) Buyer shall designate a responsible individual at Buyer's site whose duty shall be to coordinate the Site Services and the performance of this Agreement with Weyerhaeuser.

(F) To the fullest extent permitted by law, Buyer shall indemnify and hold harmless Weyerhaeuser from all claims, demands, liabilities, losses, damages, expenses (including penalties and interest, reasonable fees and disbursements of counsel, and court costs), proceedings, judgments, settlements, actions or causes of action or government inquiries of any kind (including emotional distress, sickness, personal or bodily injury or death to any person (including employees or contractors of Buyer), or damage or destruction to, or loss of use of, tangible property) arising out of or relating to Buyer's breach or failure to perform the covenants in this Article 9.

**ARTICLE 10 DISPUTE RESOLUTION.** If a dispute arises out of or relates to this Agreement, or the breach hereof, prior to instituting any legal proceeding, representatives of each party having authority to resolve the dispute shall meet to discuss and attempt to resolve the dispute. If the representatives of the parties are not able to resolve the dispute, either party may elect to have the matter resolved by mediation administered by the American Arbitration Association ("AAA") under its Commercial Mediation Procedures before a neutral, independent mediator mutually acceptable to the parties. If the parties are unable to agree on a mediator, the parties will request the AAA to supply a list of five mediators and the mediator will be selected by the parties by alternately striking names from that list, with the party initiating the mediation striking the first name. The mediation will be held at the offices of the AAA in Seattle, Washington, unless the parties agree to a different location. The costs of mediation will be shared equally by the parties. All negotiation and mediation meetings and proceedings will be confidential and will be treated as compromise and settlement negotiations for purposes of all rules of evidence. If the parties are not able to resolve the dispute by mediation, any legal proceeding shall be brought in any state or federal court within the State of Washington, and the parties hereby agree to submit to the exclusive jurisdiction of such courts in respect of any proceeding arising out of this Agreement.

## **ARTICLE 11. GENERAL MATTERS.**

### **(A) SITE SERVICE LIMITATIONS AND CONDITIONS.**

- (1) All Site Services provided by Weyerhaeuser under this Agreement are conditioned upon the parties' ability to lawfully provide and receive such Site Services, including the parties' obtaining and maintaining in effect all required permits, licenses, approvals, orders, registrations and authorizations of applicable Governmental Entities (including those required under applicable Environmental Laws). If Weyerhaeuser may not lawfully provide any Site Services,

Weyerhaeuser shall not be obligated to provide and shall not be liable for failure to supply such Site Services to Buyer, provided that, in such event, Weyerhaeuser will reasonably cooperate with Buyer to lawfully provide such Site Services in an alternate manner or in arranging to procure substitute services from another source at Buyer's cost.

- (2) Buyer acknowledges that the Site Services are procured by Weyerhaeuser primarily for its own facilities' operations and that Weyerhaeuser may operate its facilities as it sees fit in its sole discretion, notwithstanding that such operation may affect the availability of any one or more of the Site Services provided to Buyer (e.g., in the case of facility downtime or maintenance); provided, however, that in the event Weyerhaeuser does not have available sufficient quantity of one or more Site Services to satisfy Weyerhaeuser's own needs and to provide the quantity to Buyer contemplated hereunder, Weyerhaeuser will treat Buyer no less favorably than units of Weyerhaeuser's own operations using similar quantities when allocating available quantity. In such event, Weyerhaeuser will notify Buyer as far in advance as possible. So long as Weyerhaeuser treats Buyer accordingly, Weyerhaeuser shall not be liable for failure to supply any such Site Services.
- (3) If Weyerhaeuser closes or otherwise ceases to operate its Marlboro Paper Mill facility, other than as a result of the sale of such facility (or all or substantially all of the assets of such facility), Weyerhaeuser will notify Buyer as far in advance as possible and will cooperate with Buyer in arranging to procure substitute services from another source at Buyer's cost. Upon the occurrence of such event, Weyerhaeuser's obligations to provide the Site Services under this Agreement shall terminate.
- (4) If Weyerhaeuser is unable to provide Buyer with any one or more of the Site Services as provided herein after commercially reasonable efforts to attempt to continue to do so, Weyerhaeuser will notify Buyer as far in advance as possible and will cooperate with Buyer in arranging to procure substitute services from another source at Buyer's cost.
- (5) Buyer acknowledges that each Site Service provided by Weyerhaeuser under this Agreement is an accommodation to Buyer resulting from Buyer's purchase of the Assets at the Sites pursuant to the Purchase Agreement and that, absent such transaction, the Site Services would not be provided. Accordingly, unless expressly stated otherwise herein, all Site Services provided by Weyerhaeuser under this Agreement shall be limited to the quality, quantity and/or magnitude of such Site Services at the Closing Date, plus or minus ten percent. Buyer acknowledges that the prices for the Site Services set forth on Exhibit A are based on such quantities and, should the actual quantity of a Site Service provided hereunder be substantially different, the parties will negotiate a mutually agreeable adjustment to the price to equitably reflect such different quantity.

(B) **CONFIDENTIAL INFORMATION.** In the course of this Agreement, a party may have access to confidential and/or proprietary information of the other party. The party receiving such confidential or proprietary information shall disclose such information only to such employees,

agents and consultants of the receiving party who have a need to know such information in connection with the performance of this Agreement and shall cause such information to be used only for purposes directly related to the performance of this Agreement, unless the disclosing party otherwise agrees in advance in writing.

(C) **COOPERATION.** The parties shall cooperate fully with each other to effectuate the purposes of this Agreement, including, but not limited to, execution and delivery of such consents, notices, filings, applications and other documents and instruments as may be required to perform their respective obligations hereunder or as reasonably requested by the other party. The parties acknowledge that the Sites and the existing Weyerhaeuser facilities have heretofore been under common ownership and that in order for the Sites and the existing Weyerhaeuser facilities to no longer be interdependent each party must take reasonable steps to independently provide its own services as provided in this Agreement. While the Sites and the existing Weyerhaeuser facilities remain interdependent, each party will to the extent possible reasonably cooperate and consult with the other on matters which affect the operations and facilities of the other party (e.g., coordinating maintenance or downtime).

(D) **NOTICES.** All notices or other communications under this Agreement shall be in writing and either personally delivered, sent by certified or registered mail (return receipt requested, postage prepaid), sent by reputable overnight delivery service, or sent by facsimile with telephone verification of receipt, to the respective addresses set forth below (or to such other addresses as a party may designate by notice given as aforesaid).

If to Weyerhaeuser:

Weyerhaeuser Company  
33663 Weyerhaeuser Way South  
Federal Way, WA 98003 USA  
Attn: Scott Marshall  
Facsimile: (253) 924-2402

If to Buyer:

Flakeboard America Limited  
100 Kingsley Park Drive  
Fort Mill, SC 29715  
Attn: President  
Facsimile: (803) 835-1331

with a copy to:

Weyerhaeuser Company  
33663 Weyerhaeuser Way South  
Federal Way, WA 98003 USA  
Attn: Law Department  
Facsimile: (253) 924-5204

Ms. Karyn L. Bradley  
Gowling Lafleur Henderson LLP  
1 First Canadian Place  
Suite 1600 100 King Street West  
Toronto, Ontario M5X 1G5 CANADA  
Facsimile: (416) 863-3430

All notices shall be deemed given (i) if personally delivered, upon receipt; (ii) if sent by certified or registered mail, on the third Business Day after mailing; (iii) if sent by reputable overnight delivery service, on the first Business Day after timely delivery to the courier; and (iv) if sent by facsimile, on the date the sender obtains telephone verification of receipt.

(E) **ASSIGNMENT.** No assignment of any right or interest in or delegation of any duty or obligation under this Agreement shall be made, in whole or in part, by either party without the prior written consent of the other party; provided, however, that either party may assign this Agreement and its rights and obligations hereunder (i) to any Affiliate (as defined in the Purchase Agreement) of such party or (ii) to the surviving controlling entity in the event of a merger or acquisition of such party or purchase of all or substantially all of the assets of such party. This Agreement shall be assigned to, and shall be a binding obligation of, any entity acquiring the facility or facilities (or all or substantially all of the assets thereof) providing the Site Services. In addition, Weyerhaeuser may delegate its obligations under this Agreement in whole or in part to a third party, provided that any such delegation shall not relieve Weyerhaeuser of liability for such obligations.

(F) **FORCE MAJEURE.** Each party's performance of this Agreement shall be excused without liability to the extent and for the period of time necessitated by the occurrence of an event outside of a party's reasonable control (a "force majeure event"), including an Act of God, war, terrorism, sabotage, civil unrest, riot, strike, labor dispute, explosion, accident, fire, flood, earthquake, storm or other natural disaster, regulation, rule, act or intervention of any Governmental Entity, or other similar event beyond the reasonable control of a party. The imposition by any Governmental Entity or subdivision or agency thereof of any statute, law, ordinance, code, rule, regulation, order, judgment, decree or directive that makes unlawful a party's ability to provide or receive any one or more of the Site Services shall be a force majeure event with respect to the affected Site Services.

(G) **WAIVER.** No delay or failure to exercise any right or remedy under this Agreement by a party shall impair such right or remedy or be construed as a waiver thereof. A party's consent to or approval of any act or failure to act by the other party requiring approval or consent hereunder shall not be deemed to waive or render unnecessary the requirement of approval or consent of any subsequent act by the other party. A party's waiver of any breach or failure to enforce any term or condition of this Agreement at any time shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance with every term and condition hereof.

(H) **GOVERNING LAW.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Washington applicable to contracts made and performed entirely within such state, without regard to its conflict of law rules.

(I) **ATTORNEYS' FEES.** Should any legal action or proceeding be commenced by either party in order to enforce this Agreement or any provision hereof, or in connection with any alleged dispute, breach or default related hereto, the prevailing party (the party entitled to recover costs at such time as all appeals have been exhausted or expired) shall be entitled to recover reasonable attorneys' fees and costs incurred by it in connection with such action or proceeding, in addition to such other relief as may be granted.

(J) **INTEGRATED AGREEMENT; MODIFICATION.** This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior discussions, negotiations, understandings and agreements. It is intended by

the parties as a complete and exclusive statement of the terms of their agreement with respect to the subject matter hereof. This is a fully integrated agreement. Each party acknowledges that the other has made no representation or warranty, and that it has relied on no representation or warranty, other than those specifically set forth in this Agreement. This Agreement may not be modified except in a writing signed by the parties.

(K) **INTERPRETATION.** Each party acknowledges that it and its legal counsel have reviewed this Agreement. The parties agree that the terms and conditions of this Agreement shall not be construed against any party on the basis of such party's drafting of such terms and conditions. The words "herein", "hereto" and other similar words shall mean this Agreement as a whole, including the exhibits hereto, as the same may be amended, modified or supplemented from time to time.

(L) **NO AGENCY.** The parties agree that no agency, partnership or joint venture of any kind shall be or is intended to be created by or under this Agreement.

(M) **EXHIBITS.** All exhibits referred to herein are deemed to be incorporated in this Agreement in their entirety.

(N) **HEADINGS.** The headings in this Agreement are for convenience only and are not intended and will not be construed to affect the scope or meaning of any provisions hereof.

(O) **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

**WEYERHAEUSER COMPANY**

By Scott Marshall

Title: Vice President

**FLAKEBOARD AMERICA LIMITED**

By K. Shultz

Title: \_\_\_\_\_

**EXHIBIT A**  
**DESCRIPTION OF SITE SERVICES**

**CAROLINA PB FACILITY**  
**(wastewater)**

**EXHIBIT A**  
**DESCRIPTION OF SITE SERVICES**

**CAROLINA PB FACILITY**  
**(wastewater)**

1. Process Waste Water and Sewer.
  - a. Site Service commitment. Weyerhaeuser shall: (a) allow Buyer to use the existing process waste water system and sewer system that services both Weyerhaeuser's Marlboro Paper Mill facility and Buyer's Carolina PB site in order for the Marlboro Paper Mill facility to accept process waste water and sewage from Buyer's Carolina PB site; (b) route such process waste water and sewage to the Marlboro Paper Mill facility; and (c) bill Buyer for such usage as provided in this Agreement.
  - b. Term of commitment. The Site Service shall be provided for a transition period, until the third anniversary of the Closing Date. Thereafter, this Site Service will automatically renew for additional three-year renewal periods, unless Weyerhaeuser notifies Buyer of its intent to terminate this Site Service as provided below. At any time after the first anniversary of the Closing Date, Weyerhaeuser may provide notice of its intent to terminate this Site Service, provided that Weyerhaeuser will be obligated to continue providing such Site Service for a period of up to two years after the date of such notice to allow Buyer time to replace such Site Service. By the termination date, Buyer shall have either established an independent waste water and sewage system or arranged for handling of process waste water and sewage by a third party or negotiated an ongoing agreement with the Marlboro Paper Mill for continued use of its waste water and sewer system for the provision of such services to Buyer's Carolina PB site. Notwithstanding anything contained herein, this Site Service for process waste water shall continue only for so long as the Marlboro Paper Mill facility is capable of processing the volume of process waste water from Buyer's Carolina PB site.
  - c. Cost. Buyer shall pay Weyerhaeuser the sum of \$300 per month for treatment of process waste water and sewage from Buyer's Carolina PB site.



**TRANSITION SITE SERVICES AGREEMENT  
FOR  
BENNETTSVILLE MDF  
(STEAM/WASTEWATER)**

RECEIVED  
2006 AUG 11 PM 4:44  
EXECUTIVE  
SC PUBLIC SERVICES  
COMMISSION

This Transition Site Services Agreement (this "**Agreement**") is made as of July 28, 2006 by and between Weyerhaeuser Company, a Washington corporation ("**Weyerhaeuser**"), and Flakeboard America Limited, a Delaware corporation ("**Buyer**").

**RECITALS**

- A. Flakeboard Company Limited ("**FB**") and Weyerhaeuser entered into an Asset Purchase and Sale Agreement dated as of May 31, 2006 (the "**Purchase Agreement**") pursuant to which FB agreed to acquire, among other things, the Assets located at the Site (as defined in Article 1 below). Capitalized terms used but not defined in this Agreement shall have the meanings given such terms in the Purchase Agreement.
- B. FB assigned the Purchase Agreement in whole to Buyer.
- C. As of the Closing Date under the Purchase Agreement, Buyer does not have in place the facilities and infrastructure to independently provide certain services at the Sites.
- D. Buyer desires to obtain from Weyerhaeuser and Weyerhaeuser desires to provide to Buyer certain site services at the Sites.

**AGREEMENT**

NOW, **THEREFORE**, the parties hereto agree as follows:

**ARTICLE 1. AGREEMENT TO PROVIDE SITE SERVICES.** Upon the terms and subject to the conditions set forth in this Agreement, Weyerhaeuser agrees to provide to Buyer through Weyerhaeuser's existing facilities the services set forth on Exhibit A hereto (the "**Site Services**"), and Buyer agrees to take from and to pay Weyerhaeuser for such Site Services. The Site Services shall be provided at the Bennettsville MDF facility (the "**Site**"), as more fully described on Exhibit A hereto

**ARTICLE 2. TERM.**

(A) The term of this Agreement shall commence on the Closing Date under the Purchase Agreement and shall continue until the three-year anniversary of the Closing Date. Thereafter, this Agreement will automatically renew for additional three-year renewal periods, unless Weyerhaeuser notifies Buyer of its intent to terminate one or more of the Site Services and/or this Agreement as provided in paragraph (B) below.

(B) At any time after the one-year anniversary of the Closing Date, Weyerhaeuser may provide notice of its intent to terminate any one or more of the Site Services and/or this Agreement, provided that Weyerhaeuser will be obligated to continue providing such Site Service(s) for a period of up to two years after the date of such notice to allow Buyer time to replace such Site Service(s).

**ARTICLE 3. PRICE.** Buyer shall pay Weyerhaeuser for the Site Services provided under this Agreement in the amounts set forth on Exhibit A hereto.

**ARTICLE 4. PAYMENT.** Unless the parties otherwise agree, Weyerhaeuser shall bill Buyer for the Site Services on a monthly basis and Buyer shall pay each bill within ten days

**ARTICLE 5. TERMINATION.** This Agreement and the parties' obligations hereunder shall terminate as set forth in this Article 5:

(A) **TERMINATION BY COMPLETION OF TERM.** This Agreement shall terminate upon the expiration of the term set forth in Article 2 hereof. This Agreement shall terminate as to each Site Service upon the expiration of the commitment term for such Site Service set forth on Exhibit A hereto.

(B) **TERMINATION BY COMPLETION OF TRANSITION.** This Agreement shall terminate as to each Site Service on the date that Buyer has completed its transition and no longer reasonably needs such Site Service under this Agreement.

(C) **TERMINATION FOR BREACH, FINANCIAL CONDITION.** Without prejudice to its other lawful rights and remedies, either party shall have the right to terminate this Agreement at any time upon the occurrence of any of the following events:

- (1) The other party breaches or is in default of any material term, condition or obligation under this Agreement, which breach or default is (a) not waived in writing by the non-breaching party or (b) not cured to the non-breaching party's reasonable satisfaction within 15 days after the breaching party's receipt of written notice thereof (or, if not reasonably capable of being cured within such 15-day period, the breaching party fails to commence such cure within such 15-day period and thereafter diligently pursue such cure). Failure of Buyer to make payment for the Site Services when due shall be a material breach of this Agreement.
- (2) Any proceeding in bankruptcy, reorganization or for the appointment of a receiver or trustee, or any other proceeding under any law for the relief of debtors, shall be instituted by the other party, or brought involuntarily against the other party and not dismissed within a period of 60 days from the date filed, or if the other party shall make an assignment for the benefit of creditors.

(D) **TERMINATION DUE TO CHANGED CIRCUMSTANCES.** This Agreement may be terminated by Weyerhaeuser in accordance with Article 11(A)(3) hereof.

(E) **TERMINATION BY MUTUAL AGREEMENT.** This Agreement may be terminated in whole or in part at any time by the mutual written agreement of the parties hereto.

**ARTICLE 6 DIRECT ACQUISITION OF SERVICES BY BUYER.** Except for Site Services that the parties mutually agree in writing to continue, Buyer shall use commercially reasonable efforts to as promptly as practicable independently provide its own services, enter into long-term arrangements for the provision of such services or procure such services from a third party, at which time this Agreement shall terminate with respect to such Site Services in accordance with Article 5(B) hereof. Buyer shall be solely responsible for all costs and expenses associated with such direct acquisition of services.

**ARTICLE 7 COMPLIANCE WITH LAW AND POLICIES.**

(A) **COMPLIANCE WITH LAW.** Each party shall, in the performance of this Agreement, comply with each statute, law, ordinance, code, rule, regulation, order, license, permit, judgment, decree or directive of any federal, state, county, municipal or local government (including any subdivision or agency thereof) applicable to the carrying on of its business and the performance of its obligations hereunder, including applicable Environmental Laws.

(B) **COMPLIANCE WITH POLICIES; ACCESS TO PREMISES.** When a party's employees, contractors or representatives are on the premises of the other party, such party shall cause such persons to observe the working hours, working rules and safety and security policies and procedures established by the other party. Weyerhaeuser shall have such access to Buyer's premises as Weyerhaeuser determines is necessary to perform its obligations under this Agreement, including monitoring, maintenance and repair related to the Site Services.

**ARTICLE 8 WARRANTY; LIMITATION OF LIABILITY.**

(A) **WARRANTY.** Weyerhaeuser represents and warrants to Buyer that it shall use commercially reasonable efforts to provide the Site Services in accordance with the terms of this Agreement. WEYERHAEUSER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES, WHETHER OF MERCHANTABILITY, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE, FOR SAID SITE SERVICES.

(B) **LIMITATION OF LIABILITY.** Notwithstanding anything in this Agreement to the contrary, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY LOSS OF PROFITS, LOSS OF USE, DOWNTIME, OR LOSS OF SALES, FOR ANY BREACH OF OR FAILURE TO PERFORM THIS AGREEMENT, REGARDLESS OF WHETHER ANY SUCH DAMAGES WERE FORESEEABLE AND REGARDLESS OF WHETHER THE CLAIM SOUNDS IN CONTRACT, TORT OR ANY OTHER THEORY.

## ARTICLE 9 COVENANTS OF BUYER.

(A) Buyer shall maintain in good repair all property, fixtures, equipment, materials and systems located on Buyer's site used in connection with providing the Site Services, and shall promptly repair any damage or loss thereto. All maintenance, repairs and modifications thereto shall be performed in compliance with applicable laws, codes and standards using first quality materials fit for their intended purpose.

(B) Buyer shall promptly notify Weyerhaeuser if it becomes aware of any impairment to any property, fixture, equipment, material or system related to the Site Services, or if it becomes aware of any required maintenance or repair thereto, or if it makes any modifications thereto. Any work on Weyerhaeuser's property, fixtures, equipment, materials or systems shall require the prior approval of Weyerhaeuser.

(C) Buyer shall notify Weyerhaeuser, reasonably in advance of its transfer, of any change to the substance or quantity of materials or substances sent to Weyerhaeuser's facility or property for treatment or processing, including any unsanitary, hazardous or toxic materials or substances. Buyer agrees that Weyerhaeuser shall not be responsible for or have any liability for dangerous, unsanitary, hazardous or toxic materials or substances on or from Buyer's site.

(D) Buyer shall obtain and maintain the following insurance coverages:

- (1) Commercial General Liability insurance with a limit of not less than \$1,000,000 per occurrence and \$1,000,000 annual aggregates, providing coverage for bodily injury, personal injury and property damage; contractual liability; and product and completed operations liability (and "Weyerhaeuser Company" shall be named as an Additional Insured).
- (2) Comprehensive Automobile Liability insurance (including owned, non-owned, and hired vehicles) with a combined single limit of not less than \$1,000,000, providing coverage for bodily injury, personal injury and property damage.
- (3) Workers' Compensation or Industrial Accident insurance with not less than statutory limits.
- (4) Employer's or Stop-Gap Liability insurance with a limit of not less than \$1,000,000.
- (5) Umbrella Liability insurance with limits of not less than \$5,000,000 each occurrence and in the aggregate.
- (6) Business Interruption insurance.

Such insurance of Buyer shall (a) contain a severability of interest clause, (b) provide a Waiver of Subrogation and/or Waiver of Recovery on behalf of Weyerhaeuser (with the exception of Workers' Compensation insurance), and (c) be primary coverage such that Weyerhaeuser's insurance and/or self-insurance shall be excess over any and all other available coverage and/or self-insurance. Buyer shall furnish Weyerhaeuser with a Certificate of Insurance evidencing the above coverage and shall require its insurance carrier(s) to give at least 30 days written notice prior to cancellation of said coverage, either in whole or in part. The failure of Buyer's insurance

carrier to give said notice as required shall be considered a default on Buyer's part. Buyer's insurance carrier(s) shall have a Best's rating of no less than B+ VII. Buyer shall ensure that its contractors and subcontractors performing work at Buyer's Site and/or Weyerhaeuser's facility have insurance coverages and endorsements consistent with the above, with the exception of policy limits and Property and Boiler Machinery insurance.

(E) Buyer shall designate a responsible individual at Buyer's site whose duty shall be to coordinate the Site Services and the performance of this Agreement with Weyerhaeuser.

(F) To the fullest extent permitted by law, Buyer shall indemnify and hold harmless Weyerhaeuser from all claims, demands, liabilities, losses, damages, expenses (including penalties and interest, reasonable fees and disbursements of counsel, and court costs), proceedings, judgments, settlements, actions or causes of action or government inquiries of any kind (including emotional distress, sickness, personal or bodily injury or death to any person (including employees or contractors of Buyer), or damage or destruction to, or loss of use of, tangible property) arising out of or relating to Buyer's breach or failure to perform the covenants in this Article 9.

**ARTICLE 10 DISPUTE RESOLUTION.** If a dispute arises out of or relates to this Agreement, or the breach hereof, prior to instituting any legal proceeding, representatives of each party having authority to resolve the dispute shall meet to discuss and attempt to resolve the dispute. If the representatives of the parties are not able to resolve the dispute, either party may elect to have the matter resolved by mediation administered by the American Arbitration Association ("AAA") under its Commercial Mediation Procedures before a neutral, independent mediator mutually acceptable to the parties. If the parties are unable to agree on a mediator, the parties will request the AAA to supply a list of five mediators and the mediator will be selected by the parties by alternately striking names from that list, with the party initiating the mediation striking the first name. The mediation will be held at the offices of the AAA in Seattle, Washington, unless the parties agree to a different location. The costs of mediation will be shared equally by the parties. All negotiation and mediation meetings and proceedings will be confidential and will be treated as compromise and settlement negotiations for purposes of all rules of evidence. If the parties are not able to resolve the dispute by mediation, any legal proceeding shall be brought in any state or federal court within the State of Washington, and the parties hereby agree to submit to the exclusive jurisdiction of such courts in respect of any proceeding arising out of this Agreement.

## **ARTICLE 11. GENERAL MATTERS.**

### **(A) SITE SERVICE LIMITATIONS AND CONDITIONS.**

- (1) All Site Services provided by Weyerhaeuser under this Agreement are conditioned upon the parties' ability to lawfully provide and receive such Site Services, including the parties' obtaining and maintaining in effect all required permits, licenses, approvals, orders, registrations and authorizations of applicable Governmental Entities (including those required under applicable Environmental Laws). If Weyerhaeuser may not lawfully provide any Site Services,

Weyerhaeuser shall not be obligated to provide and shall not be liable for failure to supply such Site Services to Buyer, provided that, in such event, Weyerhaeuser will reasonably cooperate with Buyer to lawfully provide such Site Services in an alternate manner or in arranging to procure substitute services from another source at Buyer's cost.

- (2) Buyer acknowledges that the Site Services are procured by Weyerhaeuser primarily for its own facilities' operations and that Weyerhaeuser may operate its facilities as it sees fit in its sole discretion, notwithstanding that such operation may affect the availability of any one or more of the Site Services provided to Buyer (e.g., in the case of facility downtime or maintenance); provided, however, that in the event Weyerhaeuser does not have available sufficient quantity of one or more Site Services to satisfy Weyerhaeuser's own needs and to provide the quantity to Buyer contemplated hereunder, Weyerhaeuser will treat Buyer no less favorably than units of Weyerhaeuser's own operations using similar quantities when allocating available quantity. In such event, Weyerhaeuser will notify Buyer as far in advance as possible. So long as Weyerhaeuser treats Buyer accordingly, Weyerhaeuser shall not be liable for failure to supply any such Site Services.
- (3) If Weyerhaeuser closes or otherwise ceases to operate its Marlboro Paper Mill facility, other than as a result of the sale of such facility (or all or substantially all of the assets of such facility), Weyerhaeuser will notify Buyer as far in advance as possible and will cooperate with Buyer in arranging to procure substitute services from another source at Buyer's cost. Upon the occurrence of such event, Weyerhaeuser's obligations to provide the Site Services under this Agreement shall terminate.
- (4) If Weyerhaeuser is unable to provide Buyer with any one or more of the Site Services as provided herein after commercially reasonable efforts to attempt to continue to do so, Weyerhaeuser will notify Buyer as far in advance as possible and will cooperate with Buyer in arranging to procure substitute services from another source at Buyer's cost.
- (5) Buyer acknowledges that each Site Service provided by Weyerhaeuser under this Agreement is an accommodation to Buyer resulting from Buyer's purchase of the Assets at the Sites pursuant to the Purchase Agreement and that, absent such transaction, the Site Services would not be provided. Accordingly, unless expressly stated otherwise herein, all Site Services provided by Weyerhaeuser under this Agreement shall be limited to the quality, quantity and/or magnitude of such Site Services at the Closing Date, plus or minus ten percent. Buyer acknowledges that the prices for the Site Services set forth on Exhibit A are based on such quantities and, should the actual quantity of a Site Service provided hereunder be substantially different, the parties will negotiate a mutually agreeable adjustment to the price to equitably reflect such different quantity.

(B) **CONFIDENTIAL INFORMATION.** In the course of this Agreement, a party may have access to confidential and/or proprietary information of the other party. The party receiving such confidential or proprietary information shall disclose such information only to such employees,

agents and consultants of the receiving party who have a need to know such information in connection with the performance of this Agreement and shall cause such information to be used only for purposes directly related to the performance of this Agreement, unless the disclosing party otherwise agrees in advance in writing.

(C) **COOPERATION.** The parties shall cooperate fully with each other to effectuate the purposes of this Agreement, including, but not limited to, execution and delivery of such consents, notices, filings, applications and other documents and instruments as may be required to perform their respective obligations hereunder or as reasonably requested by the other party. The parties acknowledge that the Sites and the existing Weyerhaeuser facilities have heretofore been under common ownership and that in order for the Sites and the existing Weyerhaeuser facilities to no longer be interdependent each party must take reasonable steps to independently provide its own services as provided in this Agreement. While the Sites and the existing Weyerhaeuser facilities remain interdependent, each party will to the extent possible reasonably cooperate and consult with the other on matters which affect the operations and facilities of the other party (e.g., coordinating maintenance or downtime).

(D) **NOTICES.** All notices or other communications under this Agreement shall be in writing and either personally delivered, sent by certified or registered mail (return receipt requested, postage prepaid), sent by reputable overnight delivery service, or sent by facsimile with telephone verification of receipt, to the respective addresses set forth below (or to such other addresses as a party may designate by notice given as aforesaid).

If to Weyerhaeuser:

Weyerhaeuser Company  
33663 Weyerhaeuser Way South  
Federal Way, WA 98003 USA  
Attn: Scott Marshall  
Facsimile: (253) 924-2402

If to Buyer:

Flakeboard America Limited  
100 Kingsley Park Drive  
Fort Mill, SC 29715  
Attn: President  
Facsimile: (803) 835-1331

with a copy to:

Weyerhaeuser Company  
33663 Weyerhaeuser Way South  
Federal Way, WA 98003 USA  
Attn: Law Department  
Facsimile: (253) 924-5204

Ms. Karyn L. Bradley  
Gowling Lafleur Henderson LLP  
1 First Canadian Place  
Suite 1600 100 King Street West  
Toronto, Ontario M5X 1G5 CANADA  
Facsimile: (416) 863-3430

All notices shall be deemed given (i) if personally delivered, upon receipt; (ii) if sent by certified or registered mail, on the third Business Day after mailing; (iii) if sent by reputable overnight delivery service, on the first Business Day after timely delivery to the courier; and (iv) if sent by facsimile, on the date the sender obtains telephone verification of receipt.

(E) **ASSIGNMENT.** No assignment of any right or interest in or delegation of any duty or obligation under this Agreement shall be made, in whole or in part, by either party without the prior written consent of the other party; provided, however, that either party may assign this Agreement and its rights and obligations hereunder (i) to any Affiliate (as defined in the Purchase Agreement) of such party or (ii) to the surviving controlling entity in the event of a merger or acquisition of such party or purchase of all or substantially all of the assets of such party. This Agreement shall be assigned to, and shall be a binding obligation of, any entity acquiring the facility or facilities (or all or substantially all of the assets thereof) providing the Site Services. In addition, Weyerhaeuser may delegate its obligations under this Agreement in whole or in part to a third party, provided that any such delegation shall not relieve Weyerhaeuser of liability for such obligations.

(F) **FORCE MAJEURE.** Each party's performance of this Agreement shall be excused without liability to the extent and for the period of time necessitated by the occurrence of an event outside of a party's reasonable control (a "force majeure event"), including an Act of God, war, terrorism, sabotage, civil unrest, riot, strike, labor dispute, explosion, accident, fire, flood, earthquake, storm or other natural disaster, regulation, rule, act or intervention of any Governmental Entity, or other similar event beyond the reasonable control of a party. The imposition by any Governmental Entity or subdivision or agency thereof of any statute, law, ordinance, code, rule, regulation, order, judgment, decree or directive that makes unlawful a party's ability to provide or receive any one or more of the Site Services shall be a force majeure event with respect to the affected Site Services.

(G) **WAIVER.** No delay or failure to exercise any right or remedy under this Agreement by a party shall impair such right or remedy or be construed as a waiver thereof. A party's consent to or approval of any act or failure to act by the other party requiring approval or consent hereunder shall not be deemed to waive or render unnecessary the requirement of approval or consent of any subsequent act by the other party. A party's waiver of any breach or failure to enforce any term or condition of this Agreement at any time shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance with every term and condition hereof.

(H) **GOVERNING LAW.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Washington applicable to contracts made and performed entirely within such state, without regard to its conflict of law rules.

(I) **ATTORNEYS' FEES.** Should any legal action or proceeding be commenced by either party in order to enforce this Agreement or any provision hereof, or in connection with any alleged dispute, breach or default related hereto, the prevailing party (the party entitled to recover costs at such time as all appeals have been exhausted or expired) shall be entitled to recover reasonable attorneys' fees and costs incurred by it in connection with such action or proceeding, in addition to such other relief as may be granted.

(J) **INTEGRATED AGREEMENT; MODIFICATION.** This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior discussions, negotiations, understandings and agreements. It is intended by



the parties as a complete and exclusive statement of the terms of their agreement with respect to the subject matter hereof. This is a fully integrated agreement. Each party acknowledges that the other has made no representation or warranty, and that it has relied on no representation or warranty, other than those specifically set forth in this Agreement. This Agreement may not be modified except in a writing signed by the parties.

(K) **INTERPRETATION.** Each party acknowledges that it and its legal counsel have reviewed this Agreement. The parties agree that the terms and conditions of this Agreement shall not be construed against any party on the basis of such party's drafting of such terms and conditions. The words "herein", "hereto" and other similar words shall mean this Agreement as a whole, including the exhibits hereto, as the same may be amended, modified or supplemented from time to time.

(L) **NO AGENCY.** The parties agree that no agency, partnership or joint venture of any kind shall be or is intended to be created by or under this Agreement.

(M) **EXHIBITS.** All exhibits referred to herein are deemed to be incorporated in this Agreement in their entirety.

(N) **HEADINGS.** The headings in this Agreement are for convenience only and are not intended and will not be construed to affect the scope or meaning of any provisions hereof.

(O) **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

**WEYERHAEUSER COMPANY**

By Scott Marshall

Title: Vice President

**FLAKEBOARD AMERICA LIMITED**

By X [Signature]

Title: \_\_\_\_\_

**EXHIBIT A**  
**DESCRIPTION OF SITE SERVICES**  
**BENNETTSVILLE MDF FACILITY**  
**(Steam/Wastewater)**

**EXHIBIT A**  
**DESCRIPTION OF SITE SERVICES**

**BENNETTSTVILLE MDF FACILITY**  
**(Steam/Wastewater)**

1. Steam.

- a. Site Service commitment. Weyerhaeuser shall: (a) allow Buyer to use the existing steam supply system that services Buyer's Bennetttsville MDF site from Weyerhaeuser's Marlboro Paper Mill facility in order to deliver steam supply to Buyer's Bennetttsville MDF site; (b) route steam to Buyer's Bennetttsville MDF site; (c) reconcile Buyer's usage against Buyer's steam meters; and (d) bill Buyer for such usage as provided in this Agreement.
- b. Term of commitment. The Site Service shall be provided for a transition period until the third anniversary of the Closing Date. Thereafter, this Site Service will automatically renew for additional three-year renewal periods, unless Weyerhaeuser notifies Buyer of its intent to terminate this Site Service as provided below. At any time after the first anniversary of the Closing Date, Weyerhaeuser may provide notice of its intent to terminate this Site Service, provided that Weyerhaeuser will be obligated to continue providing such Site Service for a period of up to two years after the date of such notice to allow Buyer time to replace such Site Service. By the termination date, Buyer shall have either established an independent supply of steam or negotiated an ongoing agreement with the Marlboro Paper Mill for the continued supply of steam to Buyer's Bennetttsville MDF facility.
- c. Cost. The rate that the Buyer pays for steam shall be calculated using the same method used for February to May of 2006, which includes energy, maintenance, administrative and allocable overhead charges. This methodology is illustrated on the worksheet and diagram attached to this Exhibit A. Additionally, Buyer shall pay all costs and expenses incurred or allocable by Weyerhaeuser directly related to the maintenance and repair associated with the delivery system to Buyer's Bennetttsville MDF facility.

2. Process Waste Water, Stormwater and Sewer.

- a. Site Service commitment. Weyerhaeuser shall: (a) allow Buyer to use the existing process waste water system and sewer system that services both Weyerhaeuser's Marlboro Paper Mill facility and Buyer's Bennetttsville MDF site in order for the Marlboro Paper Mill facility to accept process waste water, stormwater and sewage from Buyer's Bennetttsville MDF site; (b) route such

process waste water, stormwater and sewage to the Marlboro Paper Mill facility, and (c) bill Buyer for such usage as provided in this Agreement.

- b. Term of commitment. The Site Service shall be provided for a transition period, until the third anniversary of the Closing Date. Thereafter, this Site Service will automatically renew for additional three-year renewal periods, unless Weyerhaeuser notifies Buyer of its intent to terminate this Site Service as provided below. At any time after the first anniversary of the Closing Date, Weyerhaeuser may provide notice of its intent to terminate this Site Service, provided that Weyerhaeuser will be obligated to continue providing such Site Service for a period of up to two years after the date of such notice to allow Buyer time to replace such Site Service. By the termination date, Buyer shall have either established an independent waste water and sewage system or arranged for handling of process waste water, stormwater and sewage by a third party or negotiated an ongoing agreement with the Marlboro Paper Mill for continued use of its waste water and sewer system for the provision of such services to Buyer's Bennettsville MDF site. Notwithstanding anything contained herein, this Site Service for process waste water shall continue only for so long as the Marlboro Paper Mill facility is capable of processing the volume of process waste water from Buyer's Bennettsville MDF site.
- c. Cost. Buyer shall pay Weyerhaeuser the sum of \$300 per month for treatment of process waste water, stormwater and sewage from Buyer's Bennettsville MDF site.